



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 571

RIN 3141-AA72

Audit Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC) proposes to amend our Audit Standards regulations. The proposed rule will amend the regulations to eliminate the Commission waiver requirement for reviewed financial statements and allow all operations grossing less than \$2 million in the previous fiscal year to submit reviewed financial statements provided that the tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit reviewed financials. The proposed amendment to the rule will also create a third tier of financial reporting for charitable gaming operations with annual gross revenues of \$50,000 or less where, if permitted by the tribe, a charitable gaming operation may submit financial information on a monthly basis to the tribe or the TGRA and in turn, the tribe or TGRA provides an annual certification to the NIGC regarding the charitable gaming operation's compliance with the financial reporting. The proposed amendment also adds a provision clarifying that the submission of an adverse opinion does not satisfy the regulation's reporting requirements.

DATES: The agency must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* information@nigc.gov
- *Fax:* (202) 632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Lawson, National Indian Gaming Commission; Telephone: (202) 632-7003.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing the factual basis behind supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On January 22, 1993, the Commission promulgated Part

571.12 establishing audit standards for tribal gaming facilities. On July 27, 2009, the Commission amended the regulation to allow tribes with multiple facilities to consolidate their audit statements into one and to allow operations earning less than \$2 million in gross gaming revenue to file an abbreviated statement.

III. Development of the Proposed Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on several topics, including proposed changes to the Audit standards. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendments to the Audit standards are designed to reduce the financial hurdles that small and charitable gaming operations face regarding the audit requirement. The Commission held two virtual consultation sessions in September and one virtual consultation in October of 2021 to receive tribal input on any proposed changes.

The Commission reviewed all comments received through consultation and now proposes these changes.

IV. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this proposed rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141– 0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy,

guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation to the public, announcing the Agency intended to consult on several topics, including proposed amendments to NIGC audit standards. The Commission held two virtual consultation sessions in September and one virtual consultation session in October of 2021 to receive tribal input on proposed changes.

List of Subjects in 25 CFR Part 571

Gambling, Indian--lands, Indian--tribal government, reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 571 is proposes to be amended as follows:

PART 571 – MONITORING AND INVESTIGATIONS

1. The authority citation continues to read as follows:

Authority: [25 U.S.C. 2706\(b\)](#), [2710\(b\)\(2\)\(C\)](#), [2715](#), [2716](#).

2. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to conduct an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The audit and auditor must meet the following standards:

(1) The independent certified public accountant must be licensed by a state board of accountancy.

(2) Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(3) The independent certified public accountant expresses an opinion on the financial statements. An adverse opinion must be submitted, but does not satisfy this requirement unless:

(i) It is the result of the gaming operation meeting the definition of a state or local government and the gaming operation prepared its financial statements in accordance with generally accepted accounting principles (GAAP) as promulgated by Financial Accounting Standards Board (FASB), or;

(ii) the adverse opinion pertains to a consolidated audit pursuant to paragraph (d) of this section and the operations not attributable to the adverse opinion are clearly identified.

(c) If a gaming operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the standards for accounting and review services of the gaming operation; and

(2) The tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit a review of the financial statements according to this paragraph and the tribe or TGRA informs the NIGC of such permission; provided that

(3) If the Chair of the NIGC has reason to believe that the assets of a gaming operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (c) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the standards for accounting and review services for each gaming facility or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(f)(1) If a tribal or charitable gaming operation has gross gaming revenues of less than \$50,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(i) The gaming operation creates, prepares, and maintains records in accordance with Generally Accepted Accounting Principles;

(ii) At a minimum, the gaming operation provides the tribe or tribal gaming regulatory authority (TGRA) with the following financial information on a monthly basis:

(A) Each occasion when gaming was offered in a month;

(B) Gross gaming revenue for each month;

(C) Amounts paid out as, or paid for, prizes for each month;

(D) Amounts paid as operating expenses, providing each recipient's name; the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the operating expense;

(E) All deposits of gaming revenue;

(F) All withdrawals of gaming revenue;

(G) All expenditures of net gaming revenues, including the recipient's name, the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the expenditure; and

(H) The names of each employee and volunteer, and the salary or other compensation paid to each person.

(iii) The tribe or TGRA permits the gaming operation to be subject to this paragraph (f), and the tribe or TGRA informs the NIGC in writing of such permission;

(iv) Within 30 days of the gaming operation's fiscal year end, the tribe or the TGRA provides a certification to the NIGC that the tribe or TGRA reviewed the charitable gaming operation's financial information, and after such review, the tribe or TGRA concludes that the charitable gaming operation conducted the gaming in a manner that protected the integrity of the games offered and safeguarded the assets used in connection with the gaming operation, and the charitable gaming operation expended net gaming revenues in a manner

consistent with IGRA, NIGC regulations, the tribe's gaming ordinance or resolution, and the tribe's gaming regulations.

(2) If the tribe or TGRA does not or cannot provide the NIGC with the certification required by paragraph (f)(1)(v) of this section within 30 days of the gaming operation's fiscal year end, the gaming operation must otherwise comply with the annual audit requirement of paragraph (b) of this section.

(3) The tribe or TGRA may impose additional financial reporting requirements on gaming operations that otherwise qualify under this paragraph (f).

(4) If the Chair of the NIGC has reason to believe that the assets of a charitable operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (f) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(5) This paragraph (f) does not affect other requirements of IGRA and NIGC regulations, including, but not limited to, fees and quarterly fee statements (25 U.S.C. 2717; 25 CFR part 514); requirements for revenue allocation plans (25 U.S.C. 2710(b)(3)); requirements for individually-owned gaming (25 U.S.C. 2710(b)(4), (d); 25 CFR 522.10); minimum internal control standards for Class II gaming and agreed-upon procedures reports (25 CFR part 543); background and licensing for primary management officials and key employees of a gaming operation (25 U.S.C. 2710(b)(2)(F); 25 CFR parts 556, 558); and facility licenses (25 CFR part 559).

Dated: May 18, 2022.

E. Sequoyah Simermeyer,
Chairman.

Jeannie Hovland,
Vice Chair.

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